

following paragraph, with any changes relative to the patent being reissued (which there are none) shown by markings pursuant to 37 CFR § 1.173(d):

The system of claim 44 wherein the plurality of connection points of each source object is stored within a connection point container, and wherein the means for selecting a connection point uses the connection point container to determine which connection point to select.

### REMARKS

With entry of the present amendment, claims 1-53 remain pending.

#### Original Patent

Applicants enclose herewith the original patent pursuant to 37 CFR § 1.178.

#### Specification

The specification has been objected to as not incorporating the certificate of correction in the patent being reissued (Action at ¶ 2). The foregoing amendment presents replacement paragraphs of the specification incorporating the certificate of correction into the specification of this reissue patent application. Since the content of the certificate of correction forms part of the patent being reissued, the certificate of correction is incorporated without underlining or bracketing as per the requirements of 37 CFR § 1.173(d). Accordingly, the objection to the specification should be withdrawn.

#### Timeliness of Broadening Reissue

Claims 46-53 have been rejected as violating the requirement in 35 U.S.C. § 251 that a broadening reissue application be filed within two years from issuance of the patent for which reissue is sought. (Action at ¶ 5.) Applicants respectfully disagree.

The Office alleges, "Applicant's intent to broaden the claims was presented with the supplemental declaration received April 24, 2002 (paper #14), this being more than two years after the patent date." The Office further alleges, "All broadening amendments were first presented more than two years after the patent date." Applicants respectfully submit that these allegations clearly contradict the record of the present reissue application. The record in the present reissue application shows that Applicants first filed broadening claims and also manifested their intent to seek broadening claims within two years from issuance of the original patent.

Applicants first filed broadening claims (claims 46 and 47) in the preliminary amendment filed concurrently with the present reissue patent application on January 16, 1998, which is within two years from issuance of the original patent (Switzer v. Sockman, 333 F.2d 935, 142 USPQ 226 (CCPA 1964) (A reissue filed on the 2-year anniversary date is considered as filed within 2 years.). The Office alleges this

preliminary amendment was "received Nov. 6, 1998." (Action at ¶ 3.) This allegation contradicts the record of this reissue application. The preliminary amendment adding broadening claims 46 and 47 clearly was filed with the present reissue patent application on January 16, 1998. <sup>OK</sup> The preliminary amendment is (1) listed in the transmittal sheet (copy attached as Exhibit A, hereto) of the reissue application; (2) listed on the postcard (copy attached as Exhibit B, hereto) stamped by the USPTO as filed on January 16, 1998; (3) the amendment (copy attached as Exhibit C, hereto) bears a certificate of express mailing listing the express mail label number and deposit date of January 16, 1998; and (4) the reissue application with which it was filed has been accorded a filing date of January 16, 1998 on the official filing receipt (copy attached as Exhibit D, hereto). Applicants therefore respectfully submit that pursuant to the express mail filing procedure per 37 CFR § 1.10, the preliminary amendment presenting broadening claims 46 and 47 must properly be accorded a filing date in the USPTO of January 16, 1998.

Further, Applicants first manifested their intent to seek broadening claims within the reissue patent application papers filed on January 16, 1998. With the reissue application, Applicants submitted an unsigned declaration of the inventors, which states at ¶ 6, "we believe the above-identified patent is partially inoperative by reason of claiming less than we, the inventors, had a right to claim in the patent. Such inoperativeness includes particularly the failure to prosecute and obtain claims commensurate with the scope of new claims 46 and 47 filed in the reissue application." The filing date of this unsigned Declaration By Inventors was January 16, 1998, as again clearly indicated in the record of the present reissue patent application, *inter alia*, by (1) the listing of the Declaration on the reissue application transmittal sheet (see, Exhibit A); (2) the listing of the Declaration on the postcard stamped January 16, 1998 (see, Exhibit B); and (3) the official filing receipt (see, Exhibit D).

Applicants respectfully observe that a broadening reissue patent application filed within two years is proper under 35 U.S.C. § 251, even though lacking execution by the inventor. (See, *In Re Bennett*, 766 F.2d 524, 528, 226 USPQ 413, 416 (Fed. Cir. 1985) (*en banc*) (A reissue application with broadened claims was filed within two years of the patent grant; however, the declaration was executed by the assignee rather than the inventor. The Federal Circuit permitted correction of the improperly executed declaration to be made more than two years after the patent grant.), a copy of which is attached as Exhibit E for the Office's convenience.)

Further, Applicants respectfully observe that further broadening claims can be added more than two years after issuance of the original patent, when the broadening reissue patent application seeking broadening is filed within two years from issuance of the original patent. (See, *In Re Doll*, 419 F.2d 925, 928, 164 USPQ 218, 200 (CCPA 1970) (If the reissue application is timely filed within two years of the

original patent grant and the applicant indicates in the oath or declaration that the claims will be broadened, then applicant may subsequently broaden the claims in the pending reissue prosecution even if the additional broadening occurs beyond the two year limit.), a copy of which is attached as Exhibit F for the Office's convenience.) Accordingly, because broadening claims 46 and 47 were filed within two years from issuance of the original patent in the present reissue patent application, the addition of further broadening claims 48-53 also is proper under 35 U.S.C. § 251.

Because Applicants timely sought broadening reissue in the application papers filed on January 16, 1998, which is within two years from the original patent grant, claims 46-53 clearly meet the requirements of 35 U.S.C. § 251. The rejection should be withdrawn.


#### CONCLUSION

The specification in its present form, with claims 46 and 47, should now be allowable. Such action is respectfully requested.

Respectfully submitted,

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